

**Notice of Allowability**

Application No.

09/964,858

Examiner

S. Devi, Ph.D.

Applicant(s)

HOSTETTER ET AL.

Art Unit

1645

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicants' amendment filed 06/13/06.
2. ☒ The allowed claim(s) is/are 1, 4, 9, 11 and 31, now renumbered as claims 1, 2, 3, 4 and 5 respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

## **ATTACHMENT TO NOTICE OF ALLOWABILITY**

### **Applicants' Amendments**

- 1) Acknowledgment is made of Applicants' amendments filed 04/05/06, 06/07/06 and 06/13/06 in response to the non-final Office Action mailed 10/05/05. With these, Applicants have amended the claims, the specification, and the Sequence Listing.

### **Status of Claims**

- 2) Claims 3 and 23 have been canceled via the amendment filed 04/05/06.  
Claims 1, 31 and 32 have been amended via the amendment filed 04/05/06.  
Claims 5-8, 16, 18-22, 24-30 and 32 have been canceled via the amendment filed 06/07/06.  
Claims 1, 4, 9, 11 and 13 have been amended via the amendment filed 06/07/06.  
Claim 31 has been amended via the amendment filed 06/13/06.  
Claims 1, 4, 9, 11 and 31 are pending and are under examination.

### **Substitute Sequence Listing**

- 3) Acknowledgment is made of Applicants' substitute sequence listing filed 06/13/06, which has been entered on 06/15/06.

### **Rejection(s) Moot**

- 4) The rejection of claims 3, 23 and 32 made in paragraph 21 of the Office Action mailed 10/05/05 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-15 and 33-37 of US Patent 6,774,219 as evidenced by Nakamura (*Clin. Physiol. Biochem.* 1: 160-172, 1983), is moot in light of Applicants' cancellation of the claims.
- 5) The rejection of claim 32 made in paragraph 22 of the Office Action mailed 10/05/05 under 35 U.S.C. § 112, first paragraph, as containing new subject matter, is moot in light of Applicants' cancellation of the claim.
- 6) The rejection of claims 3 and 32 made in paragraphs 23(b) and/or 23(c) of the Office Action mailed 10/05/05 under 35 U.S.C § 112, second paragraph, as being indefinite, is moot in light of Applicants' cancellation of the claims.
- 7) The rejection of claim 23 made in paragraph 23(c) of the Office Action mailed 10/05/05 under 35 U.S.C § 112, second paragraph, as being indefinite, is moot in light of Applicants' cancellation of the claim.

**8)** The rejection of claim 32 made in paragraph 25 of the Office Action mailed 10/05/05 under 35 U.S.C. § 102(b) as being anticipated by Hostetter *et al.* (US 5,886,151, already of record) ('151) as evidenced by Nakamura (*Clin. Physiol. Biochem.* 1: 160-172, 1983, already of record), is moot in light of Applicants' cancellation of the claim.

**9)** The rejection of claims 3, 23 and 32 made in paragraph 26 of the Office Action mailed 10/05/05 under 35 U.S.C. § 102(e)(2) as being anticipated by Hostetter *et al.* (US 6,774,219) ('219), is moot in light of Applicants' cancellation of the claims.

### **Rejection(s) Withdrawn**

**10)** The rejection of claims 1, 4 and 31 made in paragraph 21 of the Office Action mailed 10/05/05 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-15 and 33-37 of the US Patent 6,774,219 ('219) as evidenced by Nakamura (*Clin. Physiol. Biochem.* 1: 160-172, 1983), is withdrawn in light of Applicants' amendments to the claims.

**11)** The rejection of claim 31 made in paragraph 22 of the Office Action mailed 10/05/05 under 35 U.S.C. § 112, first paragraph, as containing new subject matter, is withdrawn in light of Applicants' amendments to the claim.

**12)** The rejection of claim 1 made in paragraph 23(a) of the Office Action mailed 10/05/05 under 35 U.S.C § 112, second paragraph, as being indefinite, is withdrawn in light of Applicants' amendment to the claim.

**13)** The rejection of claims 4, 9, 11 and 31 made in paragraph 23(c) of the Office Action mailed 10/05/05 under 35 U.S.C § 112, second paragraph, as being indefinite, is withdrawn in light of Applicants' amendment to the claims.

**14)** The rejection of claims 1, 4 and 31 made in paragraph 25 of the Office Action mailed 10/05/05 under 35 U.S.C. § 102(b) as being anticipated by Hostetter *et al.* (US 5,886,151, already of record) ('151) as evidenced by Nakamura (*Clin. Physiol. Biochem.* 1: 160-172, 1983, already of record), is withdrawn in light of Applicants' amendment to the claims and/or the base claim.

**15)** The rejection of claims 1, 4 and 31 made in paragraph 26 of the Office Action mailed 10/05/05 under 35 U.S.C. § 102(e)(2) as being anticipated by Hostetter *et al.* (US 6,774,219) ('219), is withdrawn in light of Applicants' amendments to the claims and/or the base claim.

**16)** The rejection of claim 9 made in paragraph 27 of the Office Action mailed 10/05/05 under 35 U.S.C. § 103(a) as being unpatentable over Hostetter *et al.* (US 5,886,151, already of record) ('151) or Hostetter *et al.* (US 6,774,219) ('219) as applied to claim 1 above, is withdrawn in light of Applicants' amendment to the claims and/or the base claim.

**17)** The rejection of claim 11 made in paragraph 28 of the Office Action mailed 10/05/05 under 35 U.S.C. § 103(a) as being unpatentable over Hostetter *et al.* (US 5,886,151, already of record) ('151) or Hostetter *et al.* (US 6,774,219) ('219) as applied to claim 1 above, is withdrawn in light of Applicants' amendment to the claims and/or the base claim.

### **Remarks**

**18)** Claims 1, 4, 9, 11 and 31 are allowed. Claims 4, 9, 11 and 31 are renumbered as claims 2, 3, 4 and 5 respectively.

**19)** Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Central Fax number (571) 273-8300 which receives facsimile transmissions 24 hours a day and 7 days a week.

**20)** Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAG or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.Mov>. Should you have questions on access to the Private PAA system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**21)** Any inquiry concerning this communication or earlier communication(s) from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A message may be left on the Examiner's voice mail service. The Examiner can normally be reached on Monday to Friday from 7.15 a.m to 4.15 p.m. except one day each bi-week which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

  
S. DEVI, PH.D.  
PRIMARY EXAMINER

July, 2006